IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Revision No. 735 of 2001
(Old No. 8322/1987)

Sant Ajayanand,
Vyavasthapak,
Shiv Mandir, Sisaiya,
P.S. Sitarganj
District Nainital ..... Petitioner.

Versus

1. State
2. Smt. Pachcho Devi ..... Respondents

Hon. Irshad Hussain, J.

Heard Sri I. S. Mehra learned counsel for the applicant and learned A.G.A. for the respondent. Perused the record.

This is a petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 28.5.1987 passed by the learned S.D.M., Khatima directing attachment of the property regarding which there was dispute between the parties to the proceedings under section 145 of the Code in view of the apprehension of breach of peace.

Against the said order a revision was also preferred by the petitioner and the same had been dismissed on 23.7.1987 and rightly so because the order under Section 146(1) of the Code is an interlocutory order.

From the perusal of the record and the affidavit of the petitioner it transpires that a civil suit no.29/87 was also instituted in the competent court of civil jurisdiction i.e. Munsif Magistrate, Khatima in respect of land in dispute and an interim order was also passed in it on 28.5.1987 whereby the parties were directed to maintain status-quo in regard to the possession of the same. There can be no doubt that the decision of the civil court as given on the basis of title will prevail on any finding of order of the criminal court. Even otherwise, the parallel criminal proceedings could not continue in view of the pendency of the civil suit and therefore the applicant has had right to put forward his contention in this light also before ht learned Magistrate under sub-Section 5 of 145 of the Code with a prayer to seek modification of the order and even to make a prayer for getting the property released. In short, the said forum is very well available to the petitioner to have his grievance

redressed according to law and considering this aspect the present petition can safely be said to be devoid of merit.

The petition is dismissed with the direction that the applicant shall prefer an application under Section 145(5) of the Code before the S.D.M.,Khatima who shall decide the same on merit expeditiously preferably within a period of two months from the date of receipt of the copy of the order.

(Irshad Hussain, J.)

Dated 08.12.2003
Rawat